

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAMES SPENCER,

Plaintiff,

v.

No. 03-CV-733
(FJS/RFT)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

APPEARANCES:

ERWIN, McCAIN LAW FIRM
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OF COUNSEL

THOMAS C. ERWIN, ESQ.

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Assistant U.S. Attorney

FREDERICK J. SCULLIN, JR., S.J.:

DECISION AND ORDER

The above-captioned matter having been presented to me by the Report-Recommendation of Magistrate Judge Randolph F. Treece filed August 22, 2007, and the Court having reviewed the Report-Recommendation and the entire file in this matter, and no objections to said Report-Recommendation having been filed, it is

hereby

ORDERED, that the Report-Recommendation of Magistrate Judge Randolph F. Treece filed August 22, 2007 is **ACCEPTED** in its entirety; and it is further

ORDERED, that the Commissioner's decision denying disability benefits is **VACATED AND REMANDED** solely for the calculation of benefits pursuant to sentence Four of 42 U.S.C. § 405(g).

IT IS SO ORDERED.

DATED: September 12, 2007
Syracuse, New York



Frederick J. Scullin, Jr.

Senior United States District Court Judge